

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Jennifer Basilio and Briana Basilio

DEFENDANTS Wallace Enterprises LLC,
Marrin Wallace, SWS LLC and
Ronald McMillan

(b) County of Residence of First Listed Plaintiff CLARK

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant CLARK

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Leon Greenberg, PC
2965 S. Jones Suite E3
Las Vegas, NV 89146 (702) 383-6085

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 USC sections 201-219

Brief description of cause:

This is a claim under the Fair Labor Standards Act

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

9/12/2022

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

1 LEON GREENBERG, ESQ., SBN 8094
2 RUTHANN DEVEREAUX-GONZALEZ, ESQ., SBN 15904
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9 Attorneys for Plaintiffs

10
11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**
13

14 JENNIFER BASILIO and BRIANNA
15 BASILIO, Individually and on behalf of
16 others similarly situated,

17 Plaintiffs,

18 vs.

19 WALLACE ENTERPRISES LLC,
20 MARVIN WALLACE, 5WS LLC and
21 RONALD MCMILLAN,

22 Defendants.
23 _____

Case No.:

COMPLAINT

24 COMES NOW Plaintiffs, Jennifer Basilio and Brianna Basilio, Individually and
25 on behalf of others similarly situated, by and through their attorneys, Leon Greenberg
26 Professional Corporation, as and for a Complaint for Violation of the Fair Labor
27 Standards Act and Nevada State Law alleges as follows:
28

JURISDICTION, PARTIES AND PRELIMINARY STATEMENT

1. This Court has original federal question jurisdiction over the claims
presented herein pursuant to the Act of June 25, 1938, ch 676, 52 Stat 1069, 29 USC

1 Sections 201-219, known as the Fair Labor Standards Act ("the FLSA" or "the Act"), a
2 law of the United States regulating interstate commerce, and specifically under the
3 provisions of Section 16 of said act, as amended (29 U.S.C. § 216(b)). The Court has
4 supplemental jurisdiction over the State Law claims alleged herein pursuant to 28
5 U.S.C. § 1367(a).

6 2. The plaintiffs, Jennifer Basilio and Brianna Basilio, are currently
7 residents and during all relevant times were residents of Clark County, Nevada, and
8 are now former employees of the defendants.

9 3. The defendant, WALLACE ENTERPRISES LLC, (one of the "Company
10 Defendants") is a limited liability company existing and established pursuant to the
11 laws of the State of Nevada with its principal place of business in the County of Clark,
12 State of Nevada and conducts business in Nevada either directly or through one of the
13 other defendants as its agent or alter ego.

14 4. The defendant, 5WS LLC, (one of the "Company Defendants") is a
15 limited liability company existing and established pursuant to the laws of the State of
16 Nevada with its principal place of business in the County of Clark, State of Nevada
17 and conducts business in Nevada either directly or through one of the other defendants
18 as its agent or alter ego.

19 5. The defendants, MARVIN WALLACE and RONALD MCMILLAN,
20 (individually Wallace and McMillan and collectively the "individual defendants") are
21 the owners, managers, members, officers, directors and/or controlling agents of the
22 company defendants and, as detailed herein, have acted as "employers or agents of an
23 employer" of the plaintiffs and the putative FLSA collective action members within
24 the meaning of the FLSA and are as a result fully liable for all claims made herein.

25 6. Defendant Wallace is the sole owner of one or more of the company
26 defendants.

27 7. Defendant Wallace is a part owner of one or more of the company
28 defendants.

1 8. Defendant Wallace is the sole member of one or more of the company
2 defendants.

3 9. Defendant Wallace is a member of one or more of the company
4 defendants.

5 10. Defendant McMillan is the sole owner of one or more of the company
6 defendants.

7 11. Defendant McMillan is a part owner of one or more of the company
8 defendants.

9 12. Defendant McMillan is the sole member of one or more of the company
10 defendants.

11 13. Defendant McMillan is a member of one or more of the company
12 defendants.

13 14. Defendant Wallace is personally liable for the FLSA violations alleged
14 herein, and has “acted as an employer” within the meaning of the FLSA as alleged in
15 paragraph 5, by committing the following acts and/or omissions: By having the
16 individual plaintiffs and similarly situated employees regularly perform 40 or more
17 hours of work per week without the payment of overtime (“time and one-half pay”) for
18 all hours they worked in excess of 40 hours per week and by failing to have all such
19 persons always paid at least the hourly minimum wage for non-overtime hours, as
20 required by the FLSA. Such circumstances and policies were imposed by defendants
21 pursuant to Wallace’s orders and/or with Wallace’s express assent and knowledge
22 despite Wallace being aware such policies were in violation of the FLSA and Wallace
23 as the sole or part owner of defendants and controlling executive officer of the
24 company defendants having the ability and authority to stop such violations of the
25 FLSA; and in continuing to have defendants violate the FLSA and/or allow such
26 violations, as alleged herein, despite having the authority and ability to stop such
27 violations, such failure to act and/or inform himself of the illegality of such actions
28 being intentional and/or willful and/or wanton and reckless as the profitability of

1 defendants' business and defendant Wallace's personal enrichment was advanced by
2 such violations of the FLSA and the defendant Wallace substantially profited from the
3 defendants' FLSA violations and as a result took no actions to prevent or correct such
4 violations.

5 15. Defendant McMillan is personally liable for the FLSA violations alleged
6 herein, and has "acted as an employer" within the meaning of the FLSA as alleged in
7 paragraph 5, by committing the following acts and/or omissions: By having the
8 individual plaintiffs and similarly situated employees regularly perform 40 or more
9 hours of work per week without the payment of overtime ("time and one-half pay") for
10 all hours they worked in excess of 40 hours per week and by failing to have all such
11 persons always paid at least the hourly minimum wage for non-overtime hours, as
12 required by the FLSA. Such circumstances and policies were imposed by defendants
13 pursuant to McMillan's orders and/or with McMillan's express assent and knowledge
14 despite McMillan being aware such policies were in violation of the FLSA and
15 McMillan as the sole or part owner of defendants and controlling executive officer of
16 the company defendants having the ability and authority to stop such violations of the
17 FLSA; and in continuing to have defendants violate the FLSA and/or allow such
18 violations, as alleged herein, despite having the authority and ability to stop such
19 violations, such failure to act and/or inform himself of the illegality of such actions
20 being intentional and/or willful and/or wanton and reckless as the profitability of
21 defendants' business and defendant McMillan's personal enrichment was advanced by
22 such violations of the FLSA and the defendant McMillan substantially profited from
23 the defendants' FLSA violations and as a result took no actions to prevent or correct
24 such violations.

25 16. The business activities undertaken by the defendants constitute a single
26 "enterprise" as that term is defined by 29 U.S.C. § 203(r) in that defendants conduct a
27 unified operation of their restaurant/food service businesses under the common control
28 of one or both of the individual defendants who impose the FLSA violations at issue

1 upon the operations of those business and conduct such business through overlapping
2 and interchangeable management and/or other personnel and/or materials and/or
3 systems and decision-making by the individual defendants.

4 17. The company defendants as a single FLSA enterprise and individually
5 engage in a for-profit business of operating restaurants and providing food services
6 which has gross revenue in excess of \$500,000 per annum and are engaged in the
7 production of goods for interstate commerce and/or the use and/or handling of goods
8 which have moved in interstate commerce as such terms are defined in the FLSA and
9 are employers subject to the jurisdiction of the FLSA.

10 **CLASS ACTION AND COLLECTIVE ACTION ALLEGATIONS**

11 18. This is a class and collective action brought on behalf of all persons who
12 worked for the defendants within the last three years in defendants' restaurant and
13 food services business in respect to the FLSA claims made herein and within such
14 other applicable statute of limitations that governs the claims made under Nevada
15 Law.

16 19. The class and collective action may include one or more sub-classes
17 consisting if the Court finds that more manageable.

18 20. Upon information and belief, there are no collective bargaining
19 agreements applicable to the plaintiff and/or members of the proposed plaintiff class
20 which waive the provisions of Article 15, Section 16 of the Constitution of the State of
21 Nevada or any other protections afforded to employees by Nevada law.

22 21. The plaintiff brings this action as a class action pursuant to Fed. R. Civ. P.
23 §23 on behalf of themselves and a class of all similarly situated persons employed by
24 the defendants in the State of Nevada.

25 22. The class of similarly situated persons for Fed. R. Civ. P. 23 purposes
26 consists of all persons employed by defendants within two years of the commencement
27 of this case or commencing on such other date that is found applicable, and continuing
28 until date of judgment, such persons also being employed in defendants' restaurant and

1 food service business except for such time periods when those persons may have been
2 employed in a salary compensated position that is exempt from the FLSA's overtime
3 pay requirements.

4 23. A common circumstance of the defendants' restaurant and food service
5 employees giving rise to the Nevada state law class action allegations and the Fair
6 Labor Standards Act collective action allegations is that while they were employed by
7 defendants those employees were not paid the minimum wage required by Nevada's
8 Constitution, Article 15, Section 16 for many or most of their work weeks that they
9 worked in that their hourly compensation, when calculated pursuant to the
10 requirements of said Nevada Constitutional provision and the FLSA did not equal at
11 least the minimum hourly wage required by those laws. An additional common
12 circumstances of those employees is that they were not in many or most of their work
13 weeks paid the overtime ("time and one-half") pay required by the FLSA and NRS
14 608.018. An additional common circumstance is that for some of those employees,
15 who received tips from customers, had their tips taken from them by defendants or
16 used by the defendants in violation of the FLSA.

17 24. Pursuant to Section 16(b) of the FLSA the individual plaintiffs bring this
18 Complaint as a collective action (also commonly referred to as an "opt-in" class), on
19 behalf of themselves and all persons similarly situated, to wit a putative class of
20 restaurant and food service workers employed by the defendants during the three years
21 prior to the filing of this Complaint until entry of judgment after trial, such persons not
22 being paid, on occasion, minimum wages, overtime wages, and their tips in accordance
23 with the FLSA. Such weeks of work where defendants failed to pay such minimum
24 wages, overtime wages, and tips are known to defendants who possess the
25 representative plaintiffs' working time and compensation records. One such specific
26 two weeks of work for the individual plaintiff Brianna Basilo is detailed in paragraph
27 25.

28 25. One cause of the defendants' afore-alleged violations of the FLSA and

1 Nevada Law was its policy of requiring tipped workers to pay to the defendants and
2 have deducted from their checks 3% or some other portion of all credit card sales to
3 the customers they served. Because such tipped workers were only paid at or a little
4 more than the minimum hourly wage required by Nevada Law, once that deduction
5 was factored in those tipped workers were being paid less than the minimum wage
6 (such policy by defendants also constituting an illegal tip-taking in violation of the
7 FLSA). For example, the plaintiff Brianna Basilo for the two week pay period of May
8 12, 2022, to May 25, 2022, was recorded in defendants' payroll records as working a
9 total of 61.67 hours and being paid for those hours a total of \$662.95 in wages at
10 \$10.75 an hour. Yet during that same period the defendants claimed to be owed
11 \$344.91 from that plaintiff as a "credit card fee" and from those same earnings did so
12 deduct at least \$318.04 from what they paid such plaintiff, issuing her a paystub
13 indicated she was receiving "net pay" of \$0.00. As a result, such plaintiffs' hourly
14 pay for that period was no more than \$5.59 per hour (\$662.95 in wages minus \$318.04
15 = \$344.91/61.67 hours), an amount far below the hourly minimum wage required by
16 Nevada Law and the FLSA. To the extent that \$318.04 deduction was intended to be,
17 or was, a deduction from such plaintiff's tip earnings that deduction was a violation of
18 the FLSA.

19 26. The named plaintiffs are informed and believe, and based thereon alleges
20 that there are at least 100 putative class action members. The actual number of class
21 members is readily ascertainable by a review of the defendants' records through
22 appropriate discovery.

23 27. There is a well-defined community of interest in the questions of law and
24 fact affecting the class as a whole.

25 28. Proof of a common or single set of facts will establish the right of each
26 member of the class to recover. These common questions of law and fact predominate
27 over questions that affect only individual class members. The individual plaintiffs'
28 claims are typical of those of the class.

1 29. A class action is superior to other available methods for the fair and
2 efficient adjudication of the controversy. Due to the typicality of the class members'
3 claims, the interests of judicial economy will be best served by adjudication of this
4 lawsuit as a class action. This type of case is uniquely well-suited for class treatment
5 since the employer's practices were uniform and the burden is on the employer to
6 establish that its method for compensating the class members complies with the
7 requirements of Nevada law and the FLSA.

8 30. The individual plaintiffs will fairly and adequately represent the interests
9 of the class and has no interests that conflict with or are antagonistic to the interests of
10 the class and has retained to represent them competent counsel experienced in the
11 prosecution of class action cases and will thus be able to appropriately prosecute this
12 case on behalf of the class.

13 31. The individual plaintiffs and their counsel are aware of their fiduciary
14 responsibilities to the members of the proposed class and are determined to diligently
15 discharge those duties by vigorously seeking the maximum possible recovery for all
16 members of the proposed class.

17 32. There is no plain, speedy, or adequate remedy other than by maintenance
18 of this class action. The prosecution of individual remedies by members of the class
19 will tend to establish inconsistent standards of conduct for the defendant and result in
20 the impairment of class members' rights and the disposition of their interests through
21 actions to which they were not parties. In addition, the class members' individual
22 claims are small in amount and they have no substantial ability to vindicate their
23 rights, and secure the assistance of competent counsel to do so, except by the
24 prosecution of a class action case.

25 **AS AND FOR A FIRST CLAIM FOR RELIEF PURSUANT TO THE**
26 **FAIR LABOR STANDARDS ACT AGAINST ALL DEFENDANTS**

27 33. The named plaintiffs bring this First Claim for Relief pursuant to 29
28 U.S.C. § 216(b) on behalf of themselves and all persons who have filed, or will file,

1 their written consents with the Court to join this lawsuit and against all defendants
2 including the individual defendants.

3 34. Pursuant to the applicable provision of the FLSA, 29 U.S.C. § 206, the
4 named plaintiff and the members of the proposed plaintiff class were entitled to a
5 minimum hourly wage. The plaintiff and the members of the proposed plaintiff class
6 did not, during every work week, receive the minimum wage of at least \$7.25 an hour
7 required by Section 206 of the FLSA.

8 35. While employers under the FLSA can avail themselves of a “tip credit”
9 against the minimum wage, allowing them under certain circumstances to pay a
10 minimum hourly wage of less than \$7.25 an hour to employees who receive tips,
11 defendants could not claim that tip credit in respect to the plaintiffs and those similarly
12 situated. Defendants could not claim such a “tip credit” because they failed to comply
13 with 29 U.S.C. § 203(m) and the regulations issued thereunder which requires that the
14 plaintiffs be advised of the defendants’ use of the tip credit and the tips plaintiff and
15 those similarly situated receive be completely retained by such employees and *not* be
16 taken or used by their employer for any purpose. Defendants failed to comply with
17 such requirement of the FLSA rendering defendants ineligible to claim any tip credit
18 under 29 U.S.C. § 203(m) and required that they pay the plaintiff and those similarly
19 situated the full FLSA minimum wage of at least \$7.25 an hour for every hour worked
20 during every work week.

21 36. Commencing March 23, 2018 the provisions of 29 U.S.C. § 203(m) were
22 amended to prohibit employers from using or taking any tips earned by their
23 employees for any purpose, even if the employee was earning a wage in excess of
24 \$7.25 an hour. During certain periods of time the named plaintiff(s) were forced to
25 pay over a certain portion of their tips to defendants and those tips were not placed in
26 or distributed in a “tip pool” for employees that was compliant with the FLSA and
27 such practices by the defendants constituted an improper use or retention of employee
28 tips by defendants in violation of the FLSA.

1 37. Defendants also failed during certain workweeks to pay the plaintiffs and
2 those similarly situated time and one-half their regular rate of pay for all hours worked
3 in excess of 40 hours per week, in violation of the FLSA's overtime pay requirements.

4
5 38. Defendants' violations of the FLSA were willful and intentional as the
6 individual defendants were well aware they needed to comply with the FLSA and took
7 intentional and purposeful actions to avoid paying the wages required by the FLSA.
8 Those actions included reducing, for payroll purposes, the number of hours plaintiffs
9 and those similarly situated were recorded to have worked and having paychecks
10 issued accordingly indicating that such persons were working fewer hours than they
11 actually had worked, as initially recorded and as defendants were aware they had
12 actually worked.

13
14 39. The plaintiff, on behalf of themselves and all other similarly situated
15 persons who consent in writing to join this action, seeks, on this First Claim for Relief,
16 a judgment for unpaid minimum wages, unpaid overtime wages, improperly taken tips,
17 and additional liquidated damages of 100% of those amounts, such sums to be
18 determined based upon an accounting of the hours worked by the plaintiff and any
19 such other persons who consent to join this action, and the wages they were paid and
20 the tips that were improperly taken, and the plaintiff also seeks an award of attorneys'
21 fees, interest and costs as provided for by the FLSA.

22
23 **AS AND FOR A SECOND CLAIM FOR RELIEF UNDER THE**
24 **NEVADA CONSTITUTION AGAINST THE COMPANY DEFENDANTS**

25 40. The named plaintiffs repeat all of the allegations previously made and
26 brings this Second Claim for Relief pursuant to Article 15, Section 16, of the Nevada
27 Constitution against defendants Wallace Enterprises LLC and 5Ws LLC only.

28 41. Pursuant to Article 15, Section 16, of the Nevada Constitution the named

1 plaintiff and the class members were entitled to an hourly minimum wage for every
2 hour that they worked for the company and the named plaintiff and the class members
3 were often not paid such required minimum wages, in that for some of the weeks they
4 worked, the plaintiff's and the class members' wages did not equal either the minimum
5 hourly wage required by the Nevada Constitution with certain such persons during
6 certain weeks being paid no wages whatsoever (working only for tips received from
7 customers).

8 42. The Company Defendants' violation of Article 15, Section 16, of the
9 Nevada Constitution involved malicious and/or dishonest and/or oppressive conduct
10 by such defendants sufficient to warrant an award of punitive damages, in that such
11 defendants were well aware they owed minimum wages to their employees but
12 engaged in an intentional and willful scheme to not pay those minimum wages by
13 engaging in various dishonest artifices including creating false payroll statements that
14 they were aware were false and creating a work environment that caused their
15 employees to understand they would lose their employment if they protested such
16 defendants' failure to pay such minimum wages.

17 43. The named plaintiffs seek all relief available to them and the alleged class
18 under Nevada's Constitution, Article 15, Section 16 including appropriate injunctive
19 and equitable relief to make the Company Defendants cease their violations of
20 Nevada's Constitution and a suitable award of punitive damages.

21 44. The named plaintiffs on behalf of themselves and the proposed plaintiff
22 class members, seek, on this Second Claim for Relief, a judgment against the
23 Company Defendants for minimum wages owed and continuing into the future, such
24 sums to be determined based upon an accounting of the hours worked by, and wages
25 actually paid to, the plaintiffs and the class members along with suitable injunction
26 and other equitable relief barring continuing violations of Nevada's Constitution, a
27 suitable award of punitive damages, and an award of attorneys' fees, interest and costs,
28 as provided for by Nevada's Constitution and other applicable laws.

**AS AND FOR A THIRD CLAIM FOR RELIEF PURSUANT TO NRS § 608.040
AND NRS § 608.050 ON BEHALF OF THE NAMED PLAINTIFF
AND THE PUTATIVE CLASS AGAINST THE COMPANY DEFENDANTS**

45. The named plaintiffs repeat all of the allegations previously made and brings this Third Claim for Relief pursuant to Article 15, Section 16, of the Nevada Constitution against defendants Wallace Enterprises LLC and 5Ws LLC only pursuant to Nevada Revised Statutes § 608.040 and § 608.050 on behalf of themselves and the alleged class of all similarly situated employees of the Company Defendants.

46. The named plaintiff has been separated from their employment with the Company Defendants prior to the filing of the instant action, and at the time of such separation were owed unpaid wages by the Company Defendants, including the unpaid minimum wages and overtime wages alleged herein.

47. The Company Defendants have failed and refused to pay the named plaintiff and numerous members of the putative plaintiff class who are the former employees of the Company Defendants their earned but unpaid wages, such conduct by the Company Defendants constituting a violation of Nevada Revised Statutes § 608.020, or § 608.030 and giving such named plaintiff and similarly situated members of the putative class of plaintiffs a claim and/or lien against the Company Defendants for a continuation after the termination of their employment with the Company Defendants of their normal daily wages, until such earned but unpaid wages are actually paid or for 30 days, as such claim and/or lien, whichever is less, pursuant to Nevada Revised Statutes § 608.040 and Nevada Revised Statutes § 608.050.

48. As a result of the foregoing, the named plaintiff seeks on behalf of themselves and the similarly situated putative plaintiff class members a judgment against the Company Defendants for the wages owed to them and such class members as prescribed by Nevada Revised Statutes § 608.040, for a sum equal to up to thirty

1 days wages, and as prescribed by Nevada Revised Statutes § 608.050, for a sum equal
2 to up to 30 days wages, along with interest, costs and attorneys' fees.

3
4 WHEREFORE, plaintiff demands the relief on each cause of action as alleged
5 aforesaid, together with costs, interest, attorney's fees and such other relief as the
6 Court deems just.

7
8 Plaintiff demands a trial by jury on all issues so triable.

9
10 Dated this 12th day of September, 2022

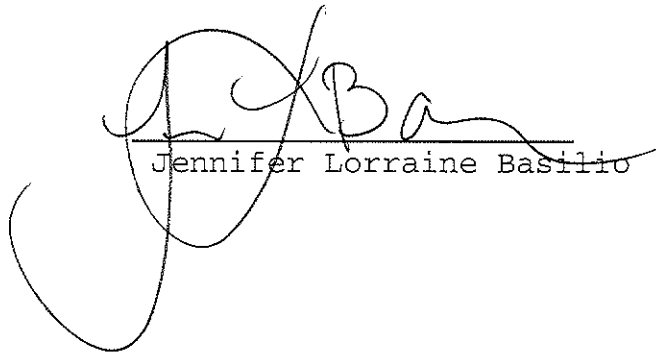
11
12 Leon Greenberg Professional Corporation

13 By: /s/ Leon Greenberg
14 LEON GREENBERG, Esq.
15 Nevada Bar No.: 8094
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(702) 383-6085

17 Attorney for Plaintiff
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CONSENT TO JOINDER

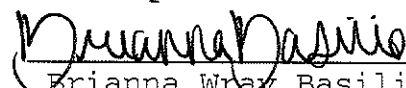
Jennifer Lorraine Basilio, by
signing below, hereby consents to join this case as a plaintiff
pursuant to 29 U.S.C. 216(b).



Jennifer Lorraine Basilio

CONSENT TO JOINDER

Brianna Wray Basilio, by
signing below, hereby consents to join this case as a plaintiff
pursuant to 29 U.S.C. 216(b).


Brianna Wray Basilio